

ELECTRO SHOCK THERAPY AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Katherine M. Bryson

LONG TITLE**General Description:**

This bill prohibits physicians, hospitals, and mental health facilities from administering electroconvulsive treatment on children younger than 14 and requires approval by a panel of physicians before administering electroconvulsive treatment on a child between 14 and 18 years of age.

Highlighted Provisions:

This bill:

- ▶ prohibits physicians, hospitals, and mental health facilities from administering electroconvulsive treatment on children younger than 14 and requires approval by a panel of physicians before administering electroconvulsive treatment on a child between 14 and 18 years of age;
- ▶ requires informed consent for the use of electroconvulsive treatment on adults;
- ▶ establishes the elements of informed consent;
- ▶ prohibits anyone other than a physician from performing electroconvulsive treatment;
- ▶ requires quarterly reporting of electroconvulsive treatment to the division and the Health Data Committee in the Department of Health;
- ▶ requires the division to enforce the reporting requirements and annually report statistical data regarding the use of electroconvulsive treatment to the governor and the Legislature; and
- ▶ sunsets the reporting requirements on July 1, 2009.



Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:

17-43-308, as renumbered and amended by Chapter 22, Laws of Utah 2003**62A-15-704**, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth

Special Session

ENACTS:

62A-15-1101, Utah Code Annotated 1953**62A-15-1102**, Utah Code Annotated 1953**62A-15-1103**, Utah Code Annotated 1953**62A-15-1104**, Utah Code Annotated 1953**62A-15-1105**, Utah Code Annotated 1953**62A-15-1106**, Utah Code Annotated 1953**62A-15-1107**, Utah Code Annotated 1953**62A-15-1108**, Utah Code Annotated 1953**63-55b-162**, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **17-43-308** is amended to read:**17-43-308. Specified treatments prohibited -- Criminal penalties.**

(1) It is a misdemeanor to:

(a) give [shock treatment, lobotomy, or] surgery to anyone without the written consent of the person or the person's next of kin or legal guardian[-]; or

(b) give electroconvulsive treatment to a person without the written consent of the person in accordance with Sections 62A-15-1102 and 62A-15-1103.

(2) Services provided under this part are governed by Title 58, Chapter 67, Utah Medical Practice Act.

~~[(2)]~~ (3) It is a felony to give psychiatric treatment, nonvocational mental health

counseling, case-finding testing, psychoanalysis, drugs, [~~shock treatment~~] electroconvulsive treatment, lobotomy, or surgery to any individual for the purpose of changing his concept of, belief about, or faith in God.

Section 2. Section **62A-15-704** is amended to read:

62A-15-704. Invasive treatment -- Due process proceedings.

(1) For purposes of this section, "invasive treatment" means treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic medication, electroshock therapy, and psychosurgery.

(2) The requirements of this section, and Part 11, Electroconvulsive Treatment Regulations, apply to all children receiving services or treatment from a local mental health authority, its designee, or its provider regardless of whether a local mental health authority has physical custody of the child or the child is receiving outpatient treatment from the local authority, its designee, or provider.

(3) (a) The division shall promulgate rules, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing due process procedures for children prior to any invasive treatment as follows:

(i) with regard to antipsychotic medications, if either the parent or child disagrees with that treatment, a due process proceeding shall be held in compliance with the procedures established under this Subsection (3);

(ii) with regard to psychosurgery and [~~electroshock therapy~~] electroconvulsive treatment administered to a child age 14 or older, a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3), regardless of whether the parent or child agree or disagree with the treatment; and

(iii) other possible invasive treatments may be conducted unless either the parent or child disagrees with the treatment, in which case a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3).

(b) In promulgating the rules required by Subsection (3)(a), the division shall consider the advisability of utilizing an administrative law judge, court proceedings, a neutral and detached fact finder, and other methods of providing due process for the purposes of this section. The division shall also establish the criteria and basis for determining when invasive treatment should be administered.

Section 3. Section **62A-15-1101** is enacted to read:

Part 11. Electroconvulsive Treatment Regulations

62A-15-1101. Application.

(1) For purposes of this part, "electroconvulsive treatment" includes prefrontal sonic sound treatment, or applied electrical voltage to the brain through electrodes which results in a grand mal seizure or epileptic seizure and which is administered to treat mental illness.

(2) This part applies to the use of electroconvulsive treatment by any person who uses or administers electroconvulsive treatment, including:

(a) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(b) a hospital or facility licensed under Section 26-21-9;

(c) a local mental health authority subject to this title, its designee or providers; and

(d) the Utah State Hospital and other mental health facilities.

Section 4. Section **62A-15-1102** is enacted to read:

62A-15-1102. Use of electroconvulsive treatment.

Electroconvulsive treatment may not be used on:

(1) a person who is younger than 14 years of age;

(2) a person who is between 14 and 18 years of age, unless the provisions of Subsection 62A-15-1103(5) are met; or

(3) a person who is 18 years of age or older, unless the person consents to the use of the treatment in accordance with Section 62A-15-1103.

Section 5. Section **62A-15-1103** is enacted to read:

62A-15-1103. Consent to treatment.

(1) The division shall adopt administrative rules which establish a standard written consent form to be used when electroconvulsive treatment is considered. The rule shall prescribe the information that must be contained in the written consent for electroconvulsive treatment.

(2) The written consent form must clearly state at a minimum:

(a) the nature and purpose of the procedure;

(b) the nature, potential, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree

121 and duration of memory loss, the possibility of permanent irrevocable memory loss, and the
122 possibility of death; and

123 (c) the probable degree and duration of improvement or remission expected with or
124 without the procedure.

125 (3) Before each treatment series begins, the physician administering the treatment shall
126 ensure that:

127 (a) the person receives a written copy of the consent form that is in the person's
128 primary language, if possible;

129 (b) the contents of the consent form are explained to the person:

130 (i) orally, in simple, nontechnical terms in the person's primary language, if possible; or

131 (ii) through the use of a means reasonably calculated to communicate with a hearing
132 impaired or visually impaired person, if applicable;

133 (c) the person signs a copy of the consent form stating that the person has read the
134 consent form and understands the information included in the documents; and

135 (d) the signed copy of the consent form is made a part of the person's clinical record.

136 (4) For a person 65 years of age or older, before each treatment series begins, the
137 physician administering the procedure shall:

138 (a) ensure that a physician has conducted a physical examination of the person and has
139 determined that the procedure is appropriate and is medically necessary;

140 (b) make the form described by Subsection (1) available to the person; and

141 (c) inform the person of any known current medical condition that may increase the
142 possibility of injury or death as a result of the treatment.

143 (5) For a person between 14 and 18 years of age, before each treatment series begins,
144 the physician administering the procedure shall ensure that:

145 (a) the due process provisions of Section 62A-15-704 have been met, if applicable; or

146 (b) if Section 62A-15-704 is not applicable:

147 (i) the parent or legal guardian of the child has been given the form described by
148 Subsection (1); and

149 (ii) three physicians have signed an appropriate form that states the procedure is
150 medically necessary.

151 (6) (a) A person who consents to the administration of electroconvulsive treatment may

152 revoke the consent for any reason and at any time.

153 (b) Revocation of consent is effective immediately.

154 Section 6. Section **62A-15-1104** is enacted to read:

155 **62A-15-1104. Physician requirement.**

156 (1) Only a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or
157 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, may administer electroconvulsive
158 treatment.

159 (2) A physician may not delegate the act of administering the treatment. A
160 nonphysician who administers electroconvulsive treatment is considered to be practicing
161 medicine in violation of Title 58, Chapter 67, Utah Medical Practice Act.

162 Section 7. Section **62A-15-1105** is enacted to read:

163 **62A-15-1105. Reports.**

164 (1) A hospital or facility where electroconvulsive treatment is administered or a
165 physician administering the treatment on an outpatient basis shall submit to the division and to
166 the Health Data Committee created in Section 26-1-7, semiannual reports relating to the
167 administration of the treatment in the hospital or facility or by the physician.

168 (2) A report must state semiannually:

169 (a) the name of each physician who has privileges in the facility to perform
170 electroconvulsive treatment and the number of electroconvulsive treatments performed by each
171 physician;

172 (b) the total number of persons who received the treatment;

173 (c) the age, sex, and race of each person receiving the treatment;

174 (d) the diagnosis for each person receiving the treatment;

175 (e) the source of the payment for the treatment;

176 (f) the average number of electroconvulsive treatments administered for each complete
177 series of treatments, but not including maintenance treatments;

178 (g) the average number of maintenance electroconvulsive treatments administered per
179 month;

180 (h) the number of fractures, reported complaints of severe and persistent memory
181 losses, incidents of apnea, and cardiac arrests without death;

182 (i) autopsy findings, including investigation of petichial hemorrhages and other small

183 blood vessel hemorrhages in the brain tissue, if an autopsy was performed and if death
184 followed within 14 days after the date of the administration of the treatment; and

185 (j) any other information required by the division.

186 (3) The information required by Subsections (2)(h) and (2)(i) must include the name of
187 the physician who administered the treatment for each occurrence listed in Subsections (2)(h)
188 and (2)(i).

189 Section 8. Section **62A-15-1106** is enacted to read:

190 **62A-15-1106. Use of information -- Report.**

191 (1) The division shall use the information received under Section 62A-15-1105 to
192 analyze and monitor the use of electroconvulsive treatment administered to treat mental illness.

193 (2) (a) The division shall annually file with the governor and the Health and Human
194 Services Interim Committee of the Legislature a written report summarizing the information
195 received under Section 62A-15-1105. The information in the report shall be summarized by
196 facility and by physician.

197 (b) The division may not directly or indirectly identify in a report issued under this
198 section a patient who received the treatment.

199 (c) The report prepared in accordance with this Subsection (2) is a public document
200 under the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

201 Section 9. Section **62A-15-1107** is enacted to read:

202 **62A-15-1107. Enforcement.**

203 The division shall enforce the provisions of this part and may, as the division considers
204 appropriate:

205 (1) issue a warning to any physician, hospital, or facility who fails to obtain consent or
206 file a report required by this part; and

207 (2) report violations of this part to the appropriate licensing authority for the physician,
208 hospital, or facility.

209 Section 10. Section **62A-15-1108** is enacted to read:

210 **62A-15-1108. Consent to healthcare.**

211 A health care provider who obtains informed consent in accordance with this part has
212 also met the requirements for informed consent under Section 78-14-5.

213 Section 11. Section **63-55b-162** is enacted to read:

214 **63-55b-162.** Repeal dates -- Title 62A.
215 Sections 62A-15-1105 and 62A-15-1106 regarding reporting requirements for
216 electroconvulsive treatments are repealed on July 1, 2009.
217 Section 12. **Effective date.**
218 This bill takes effect on July 1, 2004.

Legislative Review Note
as of 12-22-03 3:50 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0257

Electro Shock Therapy Amendments*19-Feb-04**5:31 PM*

State Impact

Provisions of this bill would require an appropriation of \$8,000 from the General Fund to the Division of Substance Abuse and Mental Health to administer the data reporting requirements.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$8,000	\$8,000	\$0	\$0
TOTAL	\$8,000	\$8,000	\$0	\$0

Individual and Business Impact

There could be additional cost to physicians and hospitals that provide electroconvulsive treatment.

Office of the Legislative Fiscal Analyst